

REDACTED TRANSCRIPT**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA****UNITED STATES OF AMERICA**v. **CRIMINAL NO. 05-21 ERIE****RASHAAN LATEEF ARNEY****CHANGE OF PLEA**

Proceedings held before the HONORABLE
MAURICE P. COHILL, JR., Senior U.S. District
Judge, in Courtroom A, U.S. Courthouse, Erie,
Pennsylvania, on Monday, December 5, 2005.

APPEARANCES:

MARSHALL J. PICCININI, Assistant United States
Attorney, appearing on behalf of the Government.

THOMAS W. PATTON, Assistant Federal Public

Ronald J. Bench, RMR - Official Court Reporter

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1 P R O C E E D I N G S

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3 (Whereupon, the Change of Plea proceedings began at

4 2:30 p.m., on Monday, December 5, 2005, in Courtroom A.)

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6 THE COURT: I understand, Mr. Patton, Mr. Arney has

7 indicated a desire to enter a plea of guilty today?

8 MR. PATTON: That is correct, your Honor.

9 THE COURT: Would you gentlemen all come forward,

10 please.

11 Before accepting your guilty plea, Mr. Arney, there

12 are a number of questions that I'm going to want to ask you to

13 assure that this is valid plea, including some about the

14 offense itself. If you do not understand any of the questions

15 or at anytime wish to consult with Mr. Patton, please say so,

16 because it is essential to a valid plea that you understand

17 each question before you answer it. Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Would you administer the oath, please.

20 THE CLERK: Raise your right hand.

21 (Whereupon, the Defendant, RASHAAN ARNEY, was

22 sworn.)

23 THE COURT: Do you understand that now that you have

24 been sworn, your answers to my questions are now being given

25 under oath, that you will be subject to the penalties of

1 perjury or of making a false statement if you don't answer

2 truthfully?

3 THE DEFENDANT: Yes.

4 THE COURT: Would you state your full name for the

5 record, please?

6 THE DEFENDANT: Rashaan Lateef Arney.

7 THE COURT: What is your date of birth?

9 THE COURT: What was your last address?

10 THE DEFENDANT: Erie, PA.

11 THE COURT: In Erie?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: How far did you go in school?

14 THE DEFENDANT: I made it to the 12th grade, but I
15 didn't graduate, I got my GED.

16 THE COURT: Okay. You have a GED, but you didn't
17 graduate, even though you were in the 12th grade, is that
18 right?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Mr. Patton, have you been able to
21 communicate with your client in the sense that you believe he
22 understands you and you understand him?

23 MR. PATTON: Yes, sir.

24 THE COURT: Mr. Arney, are you currently or have you
25 recently been under the care of a physician or a psychiatrist?

1 THE DEFENDANT: No, sir, your Honor.

2 THE COURT: Have you been hospitalized or treated

3 for narcotic addiction?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: Have you been hospitalized or treated

6 for alcohol abuse?

7 THE DEFENDANT: No, your Honor.

8 THE COURT: Have you been hospitalized or treated

9 for any sort of mental illness?

10 THE DEFENDANT: No.

11 THE COURT: Are you under the influence of any

12 narcotic drug, medicine, pills or alcoholic beverage today?

13 THE DEFENDANT: No.

14 THE COURT: Have you taken any drugs, medicine or

15 pills or drunk any alcoholic beverages in the past 24 hours?

16 THE DEFENDANT: No.

17 THE COURT: How do you feel physically and mentally

18 right now?

19 THE DEFENDANT: I'm mentally sound, your Honor.

20 THE COURT: I couldn't hear you?

21 THE DEFENDANT: I said I'm mentally sound, your

22 Honor.

23 THE COURT: Physically you feel okay?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You clearly understand what's happening

1 now?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: Does either of the attorneys have any

4 doubt as to Mr. Arney's competence to plead at this time?

5 MR. PATTON: No, sir.

6 MR. PICCININI: No, your Honor.

7 THE COURT: Based on the answers to the foregoing

8 questions, we find that Mr. Arney is competent to plead. Have

9 you had an ample opportunity to discuss your case with Mr.

10 Patton?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Have you told him all the facts in

13 connection with the charges?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Are you satisfied with the job that he's

16 done for you?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: I want to go over with you just what
19 your constitutional rights would be if the case were to go to
20 trial, Mr. Arney. First of all, do you understand that under
21 the Constitution and the laws of the United States, you are
22 entitled to a speedy and public trial by a jury on the charges
23 contained in the Indictment?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand that you have the

1 right to an attorney at every stage of the proceedings in your
2 case, and that if at anytime you can't afford an attorney, one
3 will be provided for you without charge?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand that at your trial you
6 would be presumed to be innocent, and the government would be
7 required to prove you guilty by competent evidence and beyond a
8 reasonable doubt to the satisfaction of the judge and a
9 unanimous jury?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand that being presumed to

12 be innocent means that you would not have to prove that you

13 were innocent?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand that at the trial the

16 witnesses for the government would have to come to court and

17 testify in your presence, and your attorney or you could

18 cross-examine the witnesses for the government, object to

19 evidence offered by the government and offer evidence on your

20 behalf?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand that at the trial you

23 would be entitled to compulsory process to call witnesses, that

24 is, you could subpoena witnesses and compel them to come to

25 court to testify for you?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that at the trial, you

3 would have the right to testify if you choose to do so, but you

4 would also have the right not to testify, and no inference or

5 suggestion of guilt could be drawn from the fact that you did

6 not testify?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: If you enter a plea of guilty today, do

9 you understand that you will waive your right to a trial, and

10 the other rights I have just described, and there will not be a

11 trial of any kind, and I will enter a judgment of guilty and

12 sentence you on the basis of your guilty plea after considering

13 a presentence report?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: If you do enter a plea of guilty today,

16 do you understand that you will also have to waive your right

17 not to incriminate yourself since I will ask you questions

18 about what you did in order to satisfy myself you are guilty,

19 and you will have to knowledge your guilt on the record?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that any statements

22 regarding the offense that you may have made to the United

23 States Attorney during the course of any plea negotiations

24 could not be used against you in a trial of this case?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Having discussed these rights with you,

2 do you still wish to enter of a plea of guilty today?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Have you received a copy of the

5 Indictment that was filed here?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Just so it's clear that we have gone

8 over this on the record, I'm going to read it aloud, it's not

9 long. This states that "the grand jury charges: On or about

10 November 9, 2004, in the County of Erie, in the Western

11 District of Pennsylvania, the defendant, Rashaan Lateef Arney,

12 did knowingly, intentionally and unlawfully possess with the

13 intent to distribute and distribute 50 grams or more of a

14 mixture and substance containing a detectable amount of cocaine

15 base, in the form commonly known as crack, a Schedule II

16 controlled substance. In violation of Title 21, United States

17 Code, Sections 841(a)(1) and 841(b)(1)(A)(iii)."

18 Now, that's the charge, do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Now, I want to go over with you now just

21 what the possible penalties here are. And in every criminal

22 case we worry about two different kinds of sentencing factors.

23 One is what the statute itself says and the other is what's

24 called the advisory Sentencing Guidelines, do you understand

25 that?

1 THE DEFENDANT: Yes.

2 THE COURT: Now, first, I'm going to tell you what

3 the statute says, and then secondly we'll talk about how the

4 Sentencing Guidelines may apply. First of all, the statute

5 calls for a term of imprisonment of not less than 10 years to a

6 maximum of life.

7 A fine not to exceed \$4 million.

8 And a term of supervised release of at least five

9 years. Now, are we worried about a second or third conviction

10 here?

11 MR. PICCININI: I don't believe so, your Honor.

12 THE COURT: There are increased penalties for more

13 than one drug conviction. But I won't go over that if the

14 government is not going to follow-up on that. We're also

15 required to impose a special assessment of \$100, we're not

16 allowed to waive that. We have to impose that.

17 Now, have you and Mr. Patton talked about how the

18 Sentencing Guidelines might apply in your case?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: As I said before, the Supreme Court has

21 said that those are advisory only, we're not required to follow

22 them, but we're supposed to, the courts are supposed to

23 consider them. So do you understand that I won't be able to

24 determine the guideline sentence for your case until after the

25 presentence report has been completed and you and the

10

1 government have had an opportunity to challenge any facts you

2 might disagree with that had been reported by the probation

3 officer?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand that the sentence

6 might be different from what your attorney or the United States

7 Attorney predicted?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand that after it has been

10 determined what guideline applies to a case, the judge has the

11 authority in some circumstances to impose a sentence that is

12 more severe or less severe than the sentence called for by the

13 guidelines?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand that under some

16 circumstances you or the government may have the right to

17 appeal any sentence that I might impose?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand that parole has been

20 abolished and that if you are sentenced to prison, you will not

21 be released on parole?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Mr. Arney, has anyone threatened you or

24 anyone else or forced you in any way to plead guilty in this

25 case?

1 THE DEFENDANT: No.

2 THE COURT: Have you made any confession or

3 admissions to the police or any other representative of the

4 government concerning this matter; Mr. Patton?

5 MR. PATTON: He made some statements. I don't think

6 they were particularly inculpatory, but he has made statements.

7 THE COURT: If, for any reason, you feel any

8 confession or admission or statement you made was not freely

9 and voluntarily made, you are entitled to have an evidentiary

10 hearing, what we sometimes call a suppression hearing, prior to

11 trial to have the court determine if the confession or

12 admission or statement was freely and voluntarily made. Would

13 you like me to conduct a hearing like that?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: Has there been a plea agreement entered

16 into?

17 MR. PICCININI: There has not, your Honor.

18 MR. PATTON: Your Honor, I do believe you did not go

19 over the elements of the offense with Mr. Arney, I believe we

20 skipped over that.

21 THE COURT: In any criminal case, Mr. Arney, the

22 government has so-called elements of a crime that they're

23 required to prove if the case goes to trial. On Count One in

24 this case, the government would have to prove that on or about

25 the date set forth in the Indictment, that on or about November

12

1 9, 2004, that you distributed or possessed with the intent to
2 distribute the controlled substance charged in the Indictment.

3 And, secondly, that you did so knowingly and
4 intentionally.

5 Thirdly, they'd have to prove that cocaine base is a
6 Schedule II controlled substance pursuant to Title 21, United
7 States Code, Section 812(c), Schedule II(a)(4).

8 And, fourth, that the mixture or substance
9 containing a detectable amount of cocaine base, which was 50
10 grams or more. And, of course, knowingly means that that
11 wasn't a mistake, that you knew what the mixture and substance
12 was. And intentionally means it wasn't by mistake or
13 inadvertence, that you did intend to do this knowingly and
14 intentionally, do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Mr. Arney, has anyone threatened you or
17 anyone else or forced you in any way to indicate you want to
18 plead guilty in this case?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: Has he made any confession or admissions
21 to the police or other representatives concerning this matter?

22 MR. PATTON: He has, your Honor, we've gone through
23 that part.

24 THE COURT: Okay.

25 MR. PATTON: We just established there was not a

13

1 plea agreement in this case.

2 THE COURT: Mr. Arney, has anyone promised or
3 predicted leniency with respect to any sentence I might impose?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: This is very important because if anyone
6 has predicted or promised leniency, I am putting you on notice
7 right now that any representation they may have made is not
8 binding on me, and I will sentence you according to my own
9 conscience and following the law. Do you completely understand
10 this?

11 THE DEFENDANT: Yes.

12 THE COURT: Why did you decide to plead guilty, Mr.

13 Arney?

14 THE DEFENDANT: There wasn't no way else out of it,

15 sir.

16 THE COURT: I'm going to ask Mr. Piccinini what the

17 government would expect to be able to prove here, and then ask

18 Mr. Patton and you if you agree with his statement of what

19 happened here.

20 MR. PICCININI: Thank you, your Honor. If this

21 matter proceeded to trial, the government would provide

22 testimony from the members of law enforcement and the EAGLE

23 Task Force and a cooperating informant who worked with the

24 EAGLE Task Force on November 9, 2004. At such time in the

25 course of contacting Rasheen Arney on his telephone and

14

1 indicated that he wanted a deuce, which to the parties means

2 two ounces of crack cocaine. Mr. Arney indicated the price for

3 the two ounces would be \$1,900. The cooperating source

4 negotiated the price down to \$1,850, claiming that's all the

5 money the source had on their person. A controlled purchase

6 was then set up. The cooperating source was implemented with a

7 recording device, which recorded both audio and video as best

8 it could of the transaction.

9 The parties were scheduled to meet in the vicinity

10 of 28th and Wallace here in the city, 28th and Wayne here in

11 the city of Erie. Mr. Arney called back and indicated that he

12 had not arrived yet because he was waiting for a ride. EAGLE

13 Task Force members maintained surveillance in the area of where

14 the meeting was supposed to have taken place. The defendant

15 eventually arrived by way of Yellow cab. Surveillance officers

16 were able to take photographs of Mr. Arney leaving the cab,

17 going to the location where the delivery took place and

18 returning to the cab.

19 The information then provided by the cooperating

20 source is after the meeting took place, was that Mr. Arney had

21 sold him approximately, or her approximately two ounces of

22 crack cocaine. This was consistent with the information that

23 was provided on the recordings for both audio and video.

24 The evidence was sent to the Pennsylvania State

25 Police crime laboratory and Forensic Scientist II Brett Baylor

1 analyzed the evidence and indicated it included 54.7 grams of
2 cocaine base. The testimony would show it was in the form
3 commonly known as crack cocaine, and was consistent with being
4 possessed with intent to distribute and was distributed.

5 THE COURT: Is that an accurate statement of what
6 happened here, Mr. Arney?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: And is that consistent with your
9 understanding, Mr. Patton?

10 MR. PATTON: Yes, sir.

11 THE COURT: Reviewing all these things that we've
12 discussed here today, Mr. Arney, is it still your wish to enter
13 a plea of guilty and waive your right to a trial by jury?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Mr. Patton, over what period of time
16 have you consulted with the defendant?

17 MR. PATTON: Since August of this year, your Honor.

18 THE COURT: From the facts he has told you, do you
19 concur in his plea of guilty?

20 MR. PATTON: Yes, sir.

21 THE COURT: Do you know of any reason why he should

22 not plead guilty?

23 MR. PATTON: No, sir.

24 THE COURT: Do you have any questions to ask me, Mr.

25 Arney?

16

1 THE DEFENDANT: No, sir. No, your Honor.

2 THE COURT: Since you do acknowledge you are in fact

3 guilty as charged in Count One of the Indictment, and based on

4 our discussion today, I find that you know your right to a

5 trial, what the maximum possible punishment is, and that you

6 are voluntarily pleading guilty. I will accept your guilty

7 plea and enter a judgment of guilty on your plea. I'm going to

8 order a presentence report here, Mr. Arney, and I've been given

9 a sentencing date -- first of all, we'll ask you to sign the

10 endorsement.

11 (Whereupon, the Change of Plea was executed by the

12 Defendant and Defense Counsel.)

13 THE COURT: We note that Mr. Arney has signed the

14 endorsement indicating he's now withdrawing his plea of not

15 guilty previously entered and is now pleading guilty today.

16 I've been given a sentence date of March 13, 2006,

17 at 1:30 p.m. March 13, 2006 at 1:30 in this courtroom.

18 Anything further today?

19 MR. PICCININI: No, your Honor.

20 MR. PATTON: No, your Honor.

21 THE COURT: Court's in recess.

22

23 (Whereupon, at 2:48 p.m., the Plea proceedings were

24 concluded.)

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1 C E R T I F I C A T E

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4 I, Ronald J. Bench, certify that the foregoing is a

5 correct transcript from the record of proceedings in the

6 above-entitled matter.

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11 Ronald J. Bench

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